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23 Jan 02

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Re: The Microsoft Settlement

I am the Director of Scientific Computing at a small bioinformatics company in Pasadena CA. The views expressed here do not necessarily represent those of my employer.

I have read the Revised Proposed Final Judgement (PFJ) at <http://www.usdoj.gov/atr/cases/f9400/9495.htm>

Under the Tunney Act, I would like to submit the following comment regarding the PFJ in the DOJ vs. Microsoft case.

In my company, we are studying protein structures to try to develop new cures for diseases. We would be unable to do this were it not for the incredible development pace and high quality of free software development, as represented by the gnu/linux operating system and tools, the apache web server, the perl and python programming languages, the SAMBA server, etc. Our programmers participate in the development of free software, and our company hopes to release a molecular modelling tool under a public license.

Section III(J)(2) of the PFJ contains some very strong language against entities involved in the creation of free software. Specifically, the language says that Microsoft need not describe nor license the API, Documentation, or Communications Protocols affecting authentication and authorization to companies that don't meet Microsoft's criteria as a business:

"... (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, ..."

Likewise, Section III(D) explicitly lists

"ISVs, IHVs, IAPs, ICPs, and OEMs,"

- businesses as defined in Sect VI - as being the only recipients of API and protocol disclosures.

Both of these clauses exclude entities producing free software - entities like academic faculty, national labs, students, hobbyists, etc.

But, in my opinion, the ONLY remaining challenge to Microsoft's stranglehold on PC software and innovation is coming from these non-"business" entities.

Thus, the exclusion of free software producing entities from this remedy excludes the only entities that challenge the monopoly.

Certainly this is clear to Microsoft, or this language would not be present in the remedy.

For the remedy to have any impact, the API disclosures must be made universally, e.g., on a simple website explaining the API's, file formats, whatever - for anyone to see. This also simplifies the process for Microsoft, since every simple disclosure of their API's need not be accompanied by a contract and team of lawyers.

Without disclosures to the free software community, the only challengers to the monopoly, the remedy is meaningless.

Thanks for your attention.

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